IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 980 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIM HABIBKHAN BALOCH

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MS YAMINI J DESAI for Petitioner

MR KT DAVE APP for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. Externment order came to be passed on 31st May, 1999 by Sub Divisional Magistrate, Junagadh, against the petitioner, externing him for a period of two years from the district of Junagadh and contiguous districts of Porbandar, Amreli, Rajkot City and Rajkot (Rural). The order came to be passed in exercise of powers under

Section 56(b) of Bombay Police Act ("the Act" for short). Prior to passing of this order, the petitioner was served with notice under section 59 of the Act and thereafter on conclusion of proceedings, order came to be passed. The notice under section 59 is dated 31st March, 1999/31st April, 1999. The order was carried in appeal before the appellate authority under section 60 of the Act, and the appeal came to be dismissed on August 19, 1999.

#. The petitioner challenges the externment on various grounds. However, Ms. Desai has restricted her arguments to the ground of delay in passing the order and non-application of mind by the authority.

#. Mr. K.T.Dave, learned APP has opposed this petition.

#. It has been brought to notice of this Court that the notice indicates on the first page, the date of dispatch or issuance as 31st April, 1999 whereas at the end of the notice, the date is 31st March, 1999. It is contended therefore, that this reflects that the notice though ready on 31st March, 1999 was dispatched only on 31st April, 1999. It is therefore, urged that there is delay in taking action on the part of the authority. This reflects non-application of mind on the part of externing authority as well, because two different dates are shown in the same document. Apart from this, this Court is yet to come across 31st April in Gregorian calendar and the order based on such show cause notice therefore, cannot be sustained. The authority concerned has not filed any affidavit-in-reply and no attempt is made to explain this lapse. Mr. Dave was also at loss to explain this lapse. Under the circumstances, the proceedings initiated against the petitioner suffer from the vice of non-application of mind and/or delay and the order deserves to be quashed for that very reason.

4.1 It also appears that the externing authority itself was confused about the date of the notice and has, therefore, kept it blank in the externment order in para 1. Under the circumstances, the petition deserves to be allowed.

#. The petition is allowed. The impugned order of externment passed by the Sub Divisional Magistrate, Junagadh on 19.8.99 and the appellate order dated 31st May, 1999 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

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